

App F IX 4

Previous References

✓
1935
(ml)

~~DESTROY~~
~~PROCEED~~

102

File No 002-35

Serial Nos 1, 2

Letter References

GENERAL AND REVENUE SECRETARIAT

Serial Nos 2

Part B for August 35

SUBJECT

Preferring an appeal to the High Court
from the order of acquittal passed by the City
Magistrate, Mysore regarding a prosecution under
Section 181(2) of the Mysore City Mktg Regn

Letter No 2 1657 dated 30 8-35
to the Pdt Secy, Secy, CL, Mysore

WD 03607-GPB-22 530-2 8 35

direct him to address the DL
Magistrate in the matter

les
to 10 10 35

P u D

Letter no 7449 dated 20/8/35
from the President city mtd, requesting
sanction for preferring an appeal to the
High Court from the order of acquittal
passed by the City Magistrate, Mysore
in C.C. no 667/34-35 of on the file
of the City Magistrate - re a prosecution
under Sec 181 (2) of the Mysore City
Municipalities Act

Submitted for orders copy of the rules
+ bylaws of the Mysore City Municipalities is put up.
The Law Section may be consulted

SS M/2/8
22/8

Such cases are usually dealt
with in the Law Section & as per
the appeal against order of acquittal
made in that Section & as the
file will be transferred there

SS M/2/8
22/8

The Ant Sec is a note on
the points raised by the
M. P. on the

SS M/2/8
22/8

" The grounds on which the magistrate has
acquitted the accused are -

(1) That to bring the case within clause (2) of Sec 181
of the Mysore Municipalities Act there must be proof of their
being risk of fire in the building by the business

carried on there or of nuisance being caused to the neighbourhood on account of any offensive or ~~the~~ unwholesome smell, fumes, soot or dust arising therefrom, and that no such matter has been advanced in the case, and

(115) That the Municipal Council not having delegated their powers ~~to the~~ under Section 184 to the President, the latter was not competent to issue the notice to the accused and that on this ground alone the prosecution was bound to fail

As regards (1), while the magistrate holds that no risk of fire is involved in working the electric power loom, the President thinks that cotton being a highly inflammable substance, any building in which a cotton weaving mill is housed with the necessary supply of cotton yarn always stands exposed to the risk of fire. Cotton as such is no doubt inflammable, but it is doubtful if cotton yarn is easily inflammable and whether there is risk of fire involved in working the loom even with electric power. At this rate even a place where looms are worked without electric power & places in which cotton yarn is stocked for sale will have to be treated as involving risk of fire and this is in fact what the President seems to think. It is not therefore clear if the conditions of Sec 181 (v) are satisfied

Suits filed by or against Municipalities

5/5/35

(Mysore City)

General and Revenue
Secretariat

File No

of 1935

[App F III 2]

As regards the point of law raised by the
Magistrate, viz. that the President had no power
to issue the notice, it is stated by the President that
under Sec 24(2) he can exercise the powers
conferred on the Muni Comm in Sec 245, which
include the power to issue the notice under Sec 181.
This view appears to be correct & it is not clear
why the Magte has made no reference to Sec 24(2)
in his order.

A

5 Under the rules for the Conduct of legal
affairs viz. the President should have addressed the
District Magistrate in the matter, as it is the latter
who can ^{recommend} the filing of an appeal
after obtaining the opinion of the Govt Advocate.

Chief Secy)

Am
26/8

6) For perusal -

On merits, I do not think
that the decision in the
particular case can be
challenged.

The suggestion made
A will be made to
the President

~~Respected~~

Deputy Secy)

Re

26/8/35

Am
26/8/35

Am

26-8-35

27/8 please refer
draft made
by me on 26/8/35

4-3-31

102 of 1935

in meters with a cap, d, a

Ans 21/8

Issue

27/8/20

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Issued no 2 1657 A3020 13- Document ag-
and negare. State that it should address the
abstract mapstate in the matter

2 105
 GENL & FV 17
 13/12/37

10/8/35
GT 449
Em 3

883-
Office of the President,
City Municipal Council, Mysore
Dated 20th August 1935

From

9ul 102-35-4
M A Sreenivasan, Esq , B A
President, City Municipal Council,
Mysore

22/8/35 To
The Chief Secretary to the Government
of His Highness the Maharaja of Mysore,
Bangalore

Sir,

I have the honour to bring to the kind notice of the Government the judgement delivered by the City Magistrate, Mysore in C C No 667/34-35 on his file - a Municipal prosecution under Section 181 (2) of the Mysore City Municipalities Regulation

The learned City Magistrate has in the above judgement, recorded certain findings which are of much importance to the conduct of Municipal Prosecutions under the provisions in the Regulation, dealing with nuisances, resulting from certain trades and occupations. In the case in question the accused had been granted license to install and run a cotton weaving mill in his house in Mandy Mohalla, Mysore during the year ending the 30th of June 1935. On being satisfied that by reason of its situation and the aforesaid use the continuance of the licensed trade in his house would be dangerous to life, health, and property, the President required the accused to discontinue the use of the building in question for the purpose of running the cotton weaving mill. The accused having disregarded this notice was prosecuted under Section 181(2)

The learned Magistrate has held that a cotton weaving factory, if worked with an electric motor is not exposed to the danger of catching fire. He has rejected the argument that whatever be the motive power the running of a cotton weaving mill does "involve risk of fire". Cotton being a highly inflammable substance, any building in which a cotton weaving

mill is housed with the necessary supply of cotton yarn to feed the mill, always stands exposed to the risk of catching fire as is well recognised by all textile concerns and Fire Insurance Companies. If this fact were conceded the running of such a mill would come under Cl (r) to S 181(1) and the notice to require its discontinuance would be quite valid.

The other finding arrived at by the learned City Magistrate which is on a point of law is that the notice under S 181(1) cannot be validly issued by the President as power to take action under this section has not been delegated to him. This finding appears to be quite erroneous as the President has power to issue the notice provided for under S 181(1). Power to take action under S 181 is conferred on the Municipal Commissioner by S 245 of the Regulation and S 24 (2) authorises the President of any Municipality for which a Municipal Commissioner is not appointed, "to exercise all powers that may be exercised by a Municipal Commissioner", "independently of such executive functions as are allotted to him". It thus seems clear that the President is competent to issue a notice like the one in question.

The decision in this case has attracted a considerable amount of public interest ~~and in the public~~, and has been widely published in the papers. The Daily Press has given this decision much prominence and the Tai-Nadu has in its issue dated 2-7-35 reproduced the two sentences from the judgment which express in a very pointed fashion the above conclusion of the judge. This would appear to a considerable extent to affect the ideas the public hold about Municipal offences and prosecutions therefor.

It is therefore considered necessary that in the interests of Municipal administration the above findings of law and facts arrived at by the City Magistrate should be questioned before the High Court of Mysore. I request therefore that the Government may be pleased to direct the presentation of an appeal to the High Court from the Order of acquittal passed by the City Magistrate, Mysore.

1	Serial No	C C No 667/34-35
2	Date of commission of offence	3rd February 1935
3	Date of report or complaint	3rd April 1935
4	Name of complainant (if any)	City Municipality
5	Name of accused	Basavaiya (a) Mariyappa (Devanga)
6	Parentage - " -	Shankarappa
7	Age - " -	60 years
8	Residence - " -	Mandy Mohalla, Mysore
9	Offence complained of and offence (if any) proved	Section 181 (1) of the Municipal Regulation
10	Value of property in respect of which offence was committed	The Municipality have granted me a license to work a power loom I will produce the license on the next date of hearing I am working the Power loom since the last 3½ years I will produce the old licenses also There is no complaint from my neighbours that my loom is a nuisance nor is there any danger to life or property There is zid between me and Pw Kallinge Meliah He is my neighbour I have filed three licenses including that for the current year which is in force till the end of June 1935
11	Plea of accused and his examination (if any)	Judgment:-
12	The finding and in the case of a conviction a brief statement of the reasons therefor	The accused is a weaver residing in Kamatageri Mandi Mohalla He has installed an Electric Power loom in his house and is working it for some years
13	Sentence or other final order	under Bye-law 3 framed under Sections
14	Date on which proceedings terminated	51 (1) b (3) and 181 of the Regulation 48 (1) b (3) and 151 of the Regulation (which correspond to Sections) he is required to take out a license annually from the President The license which he now holds is current up to the end of June 1935

The President purporting to act under Sub Section (1) of Section 181 served a notice Ex P1 upon him on 22-1-35 requiring him at once to discontinue the working of the Power loom on the ground that it had become nuisance to the neighbourhood and a danger to the adjacent house of Pw1 Kattige Meliah, a servant in Palace office The accused disregarded the notice and continued to work the loom Thereupon the President sanctioned his prosecution (Vide EX P2 dated 29-3-35) and a complaint was presented to the court on 3-4-1935 charging the accused with an offence punishable under subsection (2) of Section 181

Section 181 empowers the Municipal Council to regulate certain trades which are enumerated in Cls (a) to (r) of subsection (1) An Electric Power Loom does not appear to fall under any of these categories except it be under Cl(r) Under this cause no action can be taken by the Municipality unless the building is used as a manufactory or place of business, from which offensive or unwholesome fumes or soot or dust arise or which may involve a risk of fire Now, there is no evidence before me ^{that} ~~that~~ the accused's house wherein the power & loom is installed emits any bad smell or odour or that the working of the loom is attended with risk of fire It cannot be contended that there is a risk from fire in running an electric motor which is used to work the loom I am told that the flying of the shuttles from side to side along the loom makes a noise which is a nuisance to the neighbourhood In this connection I must say that no one of the locality has complained against the accused or come forward to give evidence except Pw1 whom the accused has characterised as his sworn enemy Moreover, it is conceded that the loom does not work during the ^{night} ~~right~~, its working hours being from 7 A M , to 6 P M The other piece of evidence tendered against the accused is that the working of the loom causes vibrations which are perceptible to touch, in the wall of Pw1's house which is closest to the installation This fact is spoken to not only by Pw1 but also by Pw2 the Sanitary Overseer and Pw3 the Sanitary Inspector of the Mohalla Pw1 has also deposed

that these vibrations have caused cracks in his wall, but Pws 2 and 3 deny having observed any such cracks. Now, it seems to me that the noise emanating from the shuttles and the vibrations caused by the working of the power loom are not the kind of nuisances contemplated in Cl (r) and which the Municipality is empowered to stop. I cannot punish a man under sub Section (2) unless it is shown to my satisfaction that the act prohibited falls within the purview of sub section (1).

Some other important issues were raised in this case. In C C 108 of 34-35 on the file of this court the same accused had been Prosecuted under sub section (4) for disobedience of a notice issued by the President under bye-law 10. The case was subsequently withdrawn with the permission of the court and the accused acquitted under Section 248 C P Code. The learned counsel for the defence contended that this acquittal was a bar under section 403 C P C to the trial of the accused in the present case. I wish however to point out that the facts which gave rise to the prosecution in the earlier case are quite different. Under byelaw 10 the President has power to suspend or withdraw a license granted under byelaw 3, and the accused was prosecuted not under Sub section (2) as in this case, but under subsection (4) for running the power loom during the suspension or after the withdrawal of the license. In the circumstances, I hold that the previous acquittal is no bar to the present proceedings.

The second issue raised is whether the present prosecution is at all maintainable. Under subsection (1) the authority empowered to prohibit the nuisance is the Municipal Council. In this case, there is no evidence that the Municipal Council authorised the issue of notice Ex Pl. No certified copy of any resolutions passed by the council in regard to this matter was filed with the complaint or tendered in evidence. The President seems to have acted on his own initiative, but I find from Para 1 of Chapter IV of the Mysore City Municipal Rules and Bye-laws 1927 edition that the Municipal council

have not delegated their power under section 181 (which corresponds to section 151 of the old regulation) to him I must therefore hold that the President was incompetent to issue the notice whose disobedience is sought to be punished in this case On this ground alone the prosecution is bound to fail

In the result the accused stands acquitted under section 245 C P C

A copy of the judgment will be sent to the President
In open court this the 29th day of June 1935

Sd/-*H* Subba Rao,
City Magistrate, Mysore

No 7/35-36

Copy forwarded with compliments to the President
City Municipal Council Mysore for information

Sd/-*H* Subba Rao,
City Magistrate, Mysore

"Copy"

Dr. S. S. Srinivasan
President

STN

PVR

IN THE ^{City}
COURT OF THE ~~BENCH OF HONORARY~~ MAGISTRATE
MYSORE CITY

*Complainant Sanitary
Inspector*
Subramanyapillay
on behalf of Municipality

Vs

Accused

**Baramaiya alias Mariyappa,
Proprietor Electric Power Loom
Kamatigeri, Mandi Mohalla**

The Complainant begs to state as follows —

On 3-2-1935 that a notice was served on the accused under Section 181 (1)
of Mysore City ~~of the~~ Municipal Regulation requiring him to discontinue
using the place for running the power loom as it causes nuisance to the
neighbours and damage to ^{the} adjoining-house
The accused has failed to comply with the notice

The offence is punishable under Section 181 (2) of the Mysore City
Municipal Regulation

The complainant therefore prays that the accused may be dealt
with according to law

Notice served on the party is herewith enclosed

Witnesses —

- 1 Kattige Meliah
- 2 Suleman Khan
- 3

Sd/-Subramanyapillay

Sanitary Inspector

Mysore City

Copy
M. S. S. S. S.
President S.H.S.

Recd
4.2.36
on 30/8/35

Appendix F G—1]

SUBJECT

Diary No of letter replied to *L 883*

General and Revenue Secretariat

()
the 193

Date of issue *30-8-35*

Signed by *M. H. N.*

List of enclosures

Copied by

Examined by

Section *Int*

File No *103-35*

Serial No *2*.

No *L 1657* *the 7th March*
1935

To

The President

city and mupore

Sir

With reference to your
letter - no *47449* - dated
20th Aug 1935, requesting
sanction for preferring an
appeal to the High Court from
the order of acquittal passed
by the City Magistrate, Muzam-
bar in C. C. no 667/34-35 on the
file of ~~the~~ his court, regarding
a prosecution under Sec 181(2)
of the Muzambar City Municipalities
Act, I am directed to state

mr 9/8

P-2p

that under rule 69^{of the rule} for the conduct
of legal affairs of Court, you
should ~~have~~ address the
district magistrate in the
matter, as it is ^{he} who can re-
-commence the filing of an appeal
after obtaining the opinion of
the Joint Advocate

I have etc

27/8 Chief Secy to Govt
M. S.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No *L 1657* *rule 17* *page 17* *2-7-35* Dated Bangalore *29th* August 1935
Incl 103-35-2 *30*

From

The Chief Secretary to the Government of His Highness
the Maharaja of Mysore

To

The President,
City Municipal Council,
Mysore

Sir

With reference to your letter No G T 449 dated 20th August 1935 requesting sanction for preferring an appeal to the High Court from the order of acquittal passed by the City Magistrate, Mysore in C C No.667/34-35 on the file of his court, regarding a prosecution under Section 181 (2) of the Mysore City Municipalities Regulation, I am directed to state that under rule 69 of the rules for the conduct of legal affairs of Government, you should address the District Magistrate in the matter, as it is ^{he} who can recommend the filing of an appeal after obtaining the opinion of the Government Advocate

I have the honour to be,

Sir,

Your most obedient servant,

Ans

For Chief Secretary to Government

ES